

REMARKS

Claims 1-115 are pending in the present application.

The Office has required restriction in the present application as follows:

- Group I: Claims 1-20, 31, 33-36, 38, 40-47, 68-71, drawn to a chemical structure with an affinity for a phospholipid;
- Group II: Claims 21-22, 32-35, 37, 39, 72, drawn to a chemical assembly;
- Group III: Claims 23-26, 48-67, drawn to a method of producing a recombinant chemical structure;
- Group IV: Claims 28-29, 77, drawn to method of making a drug using a chemical assembly;
- Group V: Claim 30, drawn to a method of covering thrombogenic material with a chemical structure;
- Group VI: Claims 73-76, drawn to a method of treatment with a chemical structure;
- Group VII: Claims 77, 78, drawn to method of treatment with a chemical assembly;
- Group VIII: Claims 79-82, drawn to a method of making a material for covering a thrombogenic material;
- Group IX: Claims 83-86, 88-91, 94-97, 100-103, 106-109, 111-114, drawn to a fusion protein comprising a chemical structure and a labeling molecule, and kit containing; and
- Group X: Claims 87, 92-93, 98-99, 104-105, 110, 115, drawn to a fusion protein comprising a chemical assembly and a labeling molecule, and kit containing.

In addition, the Examiner is also requiring election of a single disclosed species of chemical structures of I-VIII and individual species claimed as SEQ ID NO: 1, 2, 3, 4, or 5.

Applicants elect, with traverse, Claims 1-20, 31, 33-36, 38, 40-47, and 68-71, drawn to a chemical structure with an affinity for a phospholipid. In addition, Applicants elect, with traverse, a structure of VII (cyclic or linear) and SEQ ID NO: 2 (which comprises domain D1

of human annexin V) as single disclosed Species. Claims 13-17, 19, 21, 22, 32, 37, 39, 43, 45, 46, 50, 51, 55, 56, 60, 61, 65, 66, 69, 70, 72, 74, 75, 78, 80, 81, 84, 85, 87, 89, 90, 92, 93, 95, 96, 98, 99, 101, 102, 104, 105, 107, 108, 110, 112, 113, and 115 are believed to read on the elected species.

The Examiner, citing PCT Rule 13.1 and 13.2, contends that Groups I-X do not relate to a single general inventive concept because they lack the same or corresponding special technical features. Applicants wish to point out that MPEP §1893.03 (d) states that:

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature.

Groups I-X do share a common technical feature: the chemical structures of Group I. Accordingly, the criteria for unity of invention are satisfied.

Moreover, the Examiner merely cites Cordier-Ochsenbein et al; however, the Examiner has not provided any evidence that this special technical feature is not novel. Accordingly, the criteria for unity of invention are satisfied.

Applicants traverse that Restriction Requirement on the additional grounds that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority (a copy of the International Preliminary Examination Report is submitted herewith for the Examiner's convenience). The Authority did not take the position that unity of invention was lacking in the International application and examined all claims together. Applicants note that PCT Article 27(l) states:

No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

Moreover, Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

MPEP in §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. In fact, the International Searching Authority has searched all of the claims together.

Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No.: 24,618

Vincent K. Shier, Ph.D.
Registration No.: 50,552

Customer Number

22850

Tel: 703-413-3000

Fax: 703-413-2220

NFO:VKS